



Australian Government
Attorney-General's Department

Secretary

12/249

November 2012

Australian Productivity Commission
Trans-Tasman Study
GPO Box 1428
CANBERRA CITY ACT 2601

Dear Sir/Madam

Strengthening Trans-Tasman Economic Relations

Thank you for giving me the opportunity to comment on the joint Australian and New Zealand Productivity Commission draft report, 'Strengthening trans-Tasman economic relations'. This report provides a very worthwhile and detailed analysis of existing and potential future trans-Tasman initiatives and the challenges and obstacles to future trans-Tasman integration.

In relation to existing trans-Tasman initiatives, I note that while the report looks into many of the trans-Tasman legal reform initiatives, the report does not address one of the initiatives currently undertaken within the portfolio, the Trans-Tasman Court Proceedings and Regulatory Enforcement Project. This project builds on the Australian and New Zealand Closer Economic Relations Agreement (CER) by putting in place a framework for the effective resolution of trans-Tasman civil disputes and increased regulatory cooperation. For example in the regulatory area, the framework enables certain regulatory fines to be recognised and enforced between Australia and New Zealand. This project is close to finalisation, with both countries currently in the process of completing their last stages of domestic implementation.

The trans-Tasman Court Proceedings framework is set out in a bilateral treaty, the *Agreement Between the Government of Australia and the Government on Trans-Tasman Court Proceedings and Regulatory Enforcement*, signed by the former Commonwealth Attorney-General, the Honourable Robert McClelland, and the former New Zealand Associate Minister of Justice, the Honourable Lianne Dalziel, on 24 July 2008. This treaty has been implemented in both countries domestically in the *Trans-Tasman Proceedings Act 2010* (Cth) and (NZ). In Australia the treaty has also been implemented in the *Trans-Tasman Proceedings Regulation 2012* (Cth) and various, federal, state and territory court rules in Australia.

In relation to future opportunities, I note that the report does not address some of the potential opportunities for law reform, aimed at reducing trans-Tasman transaction costs, which could draw on the productive relationships formed between the Commonwealth Attorney-General's Department and the New Zealand Ministry of Justice.

One potential future reform option is the harmonisation of rules around the law applicable to multistate (trans-Tasman) contracts, as has occurred in the European Union in the *Regulation (EC) No. 593.2008 of the European Parliament and the Council of 17 June 2008 on the law applicable to contractual obligations* (Rome I Regulation). Harmonised rules applicable to trans-Tasman contracts, and a range of other areas of law, could decrease the regulatory costs associated with conducting trans-Tasman business. I note that the Standing Council on Law and Justice is currently conducting a public consultation that seeks to identify whether Australia's alignment of its jurisdictional and applicable civil and commercial law rules with those in other countries is desirable and could result in worthwhile micro-economic reform. Any identified areas of reform could be undertaken on a trans-Tasman basis.

I look forward to the release of the final report in December.

The action officer for this matter is Dr Karl Alderson.

Yours sincerely

Roger Wilkins AO